

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

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COOK COUNTY, ILLINOIS	)	
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Application for a certificate of	)	
local and interexchange authority to	)	Docket No. 08-0435
operate as a reseller and facilities based	)	
carrier of telecommunications services	)	
in Cook County in the State of Illinois	)	

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**DRAFT ORDER**

**I. PROCEDURAL HISTORY**

On July 16, 2008, Cook County, Illinois ("Cook County" or "Applicant") filed an application with the Illinois Commerce Commission ("Commission") seeking certificates of service authority to provide facilities based local and interexchange telecommunications service, and resold telecommunications service within the state of Illinois. The requested certificates are sought pursuant to Sections 13-403, 13-404 and 13-405 of the Public Utilities Act ("PUA"). ILCS 5/13-403, 13-404, and 13-405. Also, in its application the Applicant provided direct testimony from: 1) Donna Dunnings, Chief Financial Officer for Cook County; and 2) Antonio A. Hylton, Chief Information Officer for the Cook County bureau of Information Technology and Automation.

Pursuant to notice given in accordance with the rules and regulations of the Commission, this matter convened for an initial status hearing on August 2, 2008. Additional status conferences were held on October 6, 2008 and November 6, 2008. At the last status Staff and Cook County endeavored to work through and file a Stipulation by November 20, 2008.

The Stipulation on the matter was filed on November 20, 2008 between the Applicant and Staff.

**II. STATUTORY CRITERIA FOR CERTIFICATES OF SERVICE AUTHORITY**

The question at hand is whether or not Cook County possesses sufficient, financial, technical, and managerial capabilities to obtain the certificates of service authority it requested.

The statutory requirement for granting certificates of exchange and interexchange service authority are plainly and unambiguously set out in the Act. Accordingly, the relevant provisions governing such authority are set forth in Sections

13-403, 13-404, and 13-405 of the Public Utilities Act (“PUA”). 220 ILCS 5/13-403, 5/13-404, and 5/13-405. Section 13-403 provides in relevant part that “The Commission shall approve an application for a Certificate of Interexchange Service Authority only upon a showing by the applicant, and a finding by the Commission, after notice and hearing, that the applicant possesses sufficient technical, financial and managerial resources and abilities to provide interexchange telecommunications service.” 220 ILCS 5/13-403 (emphasis added). Both section 13-404, regarding the resale of local exchange or interexchange service, and section 13-405, regarding local exchange service, contain the same requirements.

The Commission, as a creature of statute, has no general powers except those expressly conferred by the legislature. As stated by the Illinois Supreme Court in *Business and Professional People*, “Since the Commission is a statutory creature, its powers are dependent thereon, and it must find within the statute the authority which it claims. [Citations] Such agencies have no general or common law powers.” *Business and Professional People for the Public Interest v. Illinois Commerce Comm’n*, 136 Ill. 2d 192, 244, 555 N.E.2d 693, 716-17 (Ill. 1990). Consequently, Commission certification of County must be confined to a showing of whether or not it has met the three statutory certification requirements of sufficient technical, financial and managerial abilities as found in the PUA. As described in *Illinois Independent Telephone Ass’n*, “The criteria for granting certificates of interexchange service authority are plainly and unambiguously stated in Section 13-403, which provides such certificates are to be issued only on the basis therein.” *Illinois Independent Telephone Ass’n*, 183 Ill. App. 3d at 236-37, 539 N.E.2d at 726-27.

In support of its application, Cook County presented the testimony of Donna Dunnings, Chief financial Officer for Cook County and Antonio A. Hylton, Chief Information Officer for the Cook County bureau of Information Technology and Automation, to show that it possesses sufficient technical, financial, and managerial abilities and resources to provide facilities-based and resold local exchange and interexchange services. Ms. Dunnings described Cook County’s financial structure and sponsored the Applicants most recent audited financials. Cook County Exhibit 2.0. Mr. Hylton described Cook County’s technical and managerial capabilities and requisite skill for operating facilities-based and resold local exchange telecommunications services, as well as facilities-based and resold local interexchange telecommunications services within the State of Illinois. Cook County Ex. 1.0.

On the basis of the record in this case, including the review by Staff, the Commission finds that Cook, County has made the requisite showing in support of its certification request, that the home rule unit county satisfies each of the statutory certification requirements.

### **III. COOK COUNTY A HOME RULE UNIT OF GOVERNMENT**

Cook County (“Cook County” or “County”) is an Illinois home rule county as authorized by the 1970 Illinois Constitution, Article VII. (et seq.) Section 6. Under

Section 6, Powers of Home Rule Units, Cook County contends that it has the authority to transact business throughout the state. The Applicant references Section 6(a) which states, "A County which has a chief executive officer elected by the electors of the county and any municipality which has a population of more than 25,000 are home rule units." The subject Section goes on to add, "...a home rule unit may exercise any power and perform any function pertaining to its government and affairs including, but not limited to..." Furthermore Section 6(m) states, "**Powers and functions of home rule units shall be construed liberally.**"

Although, the Commission has previously granted such certificates to Illinois home-rule municipal corporations, *see, e.g., City of Aurora*, ICC Docket No. 06-0702; *City of Naperville* ICC Docket No. 03-0779,, the Applicant is the first County to come before the Commission requesting the subject certificates of Service of Authority..

#### **IV. STIPULATION**

Staff and Cook County executed a Stipulation of Undisputed Facts filed on e-Docket on November 20, 2008. Included in the Stipulation were the following: 1) the information contained in Cook County's Responses to Staff Data Requests QL-2.01 through QL-2.04; 2) Cook County's agreement as a matter of record that it shall comply with all federal and state rules and regulations related to telecommunications, including, but not limited to, laws concerning taxation, regardless whether its operations are inside or outside of the Illinois County of Cook; and 3) Staff's representation that it would not oppose the application.

#### **V. REQUESTED WAIVERS**

##### **A. Waiver of Telephone Directory Requirement – Section 735.180**

As part of its request for certificates of Service Authority, Cook County seeks a waiver of the requirements to publish telephone directories as set forth in Section 735.180 of 83 Ill. Admin. Code Part 735. Cook County Application at Appendix A. Cook County claims that a waiver of this requirement will reduce the economic burden of regulation and Cook County represents that it will make arrangements with the incumbent local exchange carrier ("ILEC") to list Cook County's telephone numbers in the directory published by the ILEC.

Staff had no objection to Cook County's request for waiver of Section 735.180 of 83 Ill. Admin. Code Part 735. There being no dispute in the matter and consistent with past practice, the Commission in this case finds it reasonable to grant Cook County's requested waiver of Section 735.180 of Code Part 735.

##### **B. Waiver of the Uniform System of Accounts – Code Part 710.**

In further part of its request for certificates of service authority, Cook county seeks a waiver of the requirement to comply with the Commission's Uniform System of

accounts as set forth in 83 Ill. Admin. Code Part 710. In its application the Applicant stated in Appendix C that it will maintain records in accordance with Generally Accepted Accounting Principles ("GAAP") as applied to governmental units. Also, Cook County Witness Donna Dunnings testified that Cook County follows, "the reporting model required by the Governmental Accounting Standards Board (GASB)...[t]he Financial Statements are audited by an outside independent auditor." Cook County Exhibit 2.0 at 3-4. Furthermore, the Applicant claims that a waiver of this requirement is necessary to avoid, "an undue financial burden on Cook County."

In part, it is under Section 3-14048 of the Counties Code (55 ILCS 5/3-14048) that establishes the position of Cook County Witness Dunnings and requires the County to adopt "a uniform system of books of account, forms, reports and records to be used in the offices of every county officer of Cook County \*\*\* for the purpose of keeping an accurate statement of moneys received by them and all the financial and business transactions of their respective officers; and said auditor shall audit or cause to be audited from day to day the receipts of the said several offices and the reports of the said offices of the business transactions of their respective offices and certify to their correctness or incorrectness to the County Board."

While the Commission has previously granted waivers to municipalities, the auditing requirements applicable to Cook County are not stated as explicitly in the Counties Code as with respect to municipalities, in the Municipal Code. The Illinois Municipal Auditing Law, part of the Municipal Code, requires municipalities to maintain all of its funds and accounts in accordance with Generally Accepted Accounting Principles ("GAAP"), including funds or accounts for each of its own municipally-owned or operated public utilities. See 65 ILCS 5/8-8-5. Next, 65 ILCS 5/8-8-3 requires municipalities owning or operating any type of public utility to be audited annually. Additionally, the Municipal Code requires the municipality to show the true and complete financial results of municipal ownership. 65 ILCS 5/11-117-13 and 65 ILCS 5/8-8-7 requires municipalities to file one copy of its annual report with the Comptroller, which the Comptroller may reject for failing to comply with the subject Act. Many of these requirements, such as the reference to GAAP, are not expressed in the auditing provisions applicable to Cook County.

Here, the Applicant is the first County to come before the Commission requesting the subject certificates of Service of Authority and requesting certain waivers, as described in the previous paragraph, the Commission has previously granted such waivers to Municipalities that were also home rule units of government. For example, in the *City of Naperville* proceeding, Docket No. 03-0779, Naperville's obligations under the Municipal Code were compelling reasons for Staff's support of granting a waiver of Code Part 710. Although the auditing provisions in the Counties Code applicable to Cook County are not as explicit as the requirements governing municipal audits, the requirements to which the County is subject appear to be sufficient. Section 3-14048 of the Counties Code requires the County, and its auditors, to maintain separate accounts of the various County operations, and to provide timely and accurate financial reports of those operations. 55 ILCS 5/3-14048.

Thus, given Cook County's obligations under the Counties Code and the presumption that public servants will abide by their statutory obligations, Staff recommends that the Commission not impose the additional and redundant obligation of Cook County to comply with code Part 710. In this case, granting the subject waiver would be consistent with both the PUA and the purpose of Article XIII of the PUA.

## **VI. CONCLUSION**

Having reviewed the complete record we are persuaded that Cook County has met the statutory requirements found in Sections 13-403, 404, and 405 of the PUA. ILCS 5/13-403, 13-404, and 13-405. Thus, we find that the Applicant does possess the sufficient technical, financial and managerial resources and abilities to provide local and interexchange telecommunications service.

Furthermore, the Applicant should be granted a waiver of 82 Ill. Adm. Code 735.180, which requires the publication of a directory, on the condition that the Applicant will meet the obligation of listing its customers in a directory, by making arrangements with the incumbent local exchange carrier ("ILEC") to have the Applicant's customers listed in the directories published by the ILEC. Also, in light of Cook County's obligations under the county code and on the condition that the Applicant maintains its accounting records in accordance with the Governmental Accounting Standards Board ("GASB"), the Applicant should be granted a waiver of 83 Ill. Adm. Code Part 710 (governing the uniform System of Accounts for telecommunications carriers). In addition, both requested waivers should be granted because such action will reduce the economic burden of regulation and is not inconsistent with the purposes and policies of the PUA.

## **VII. FINDING AND ORDERING PARAGRAPHS**

The Commission, having examined the entire record and being fully advised in the premises, is of the opinion and finds that:

- (1) Applicant, Cook County, Illinois is an Illinois home rule county as authorized in the 1970 Illinois Constitution, Article VII. Section 1 and Section 6 and governed by 5 ILCS 5/ Counties Code (et. seq.), seeking authority to provide facilities based local and interexchange telecommunications service, and resold telecommunications service within the state of Illinois. Thus, Cook County, Illinois seeks to become a telecommunications carrier within the meaning of Section 13-202 of the Public Utilities Act and;
- (2) the Commission has jurisdiction over the Applicant and the subject matter herein;

- (3) the recitals of fact and the conclusions set out in the above portions of this Order are supported by the record and adopted as the findings of fact and conclusions of law;
- (4) as required under Sections 13-403, 13-404, and 13-405 of the PUA, the Applicant has shown and is found to possess sufficient technical, financial and managerial resources and abilities to provide facilities based and resold exchange and interexchange telecommunications services within the State of Illinois;
- (5) pursuant to Section 13-402 of the PUA and on the condition that the Applicant maintains its accounting records in accordance with the Governmental Accounting Standards Board ("GASB"), the Applicant should be granted a waiver of 83 Ill. Adm. Code Part 710 (governing the uniform System of Accounts for telecommunications carriers) because such action will reduce the economic burden of regulation and is not inconsistent with the purposes and policies of the PUA;
- (6) further the Applicant should be granted a variance of 83 Ill. Adm. Code 735.180, which requires the publication of a directory, on the condition that the Applicant will meet the obligation of listing its customers in a directory, by making arrangements with the incumbent local exchange carrier ("ILEC") to have the Applicant's customers listed in the directories published by the incumbent ILEC;
- (7) the Applicant should file with the Commission a tariff consisting of its rates, rules and regulations, in accordance with Sections 13-501 and 13-502 of the Act to be effective upon proper filing, before commencing service;
- (8) with regard to the Applicant's provision of interexchange telecommunications services, those services are to be competitive telecommunications services as defined in Section 13-209 of the PUA;
- (9) the applicability of waivers and variance of rules with respect to the Applicant is subject to any future Commission proceeding initiated to consider the applicability of such rules.

IT IS THEREFORE ORDERED that Cook County, Illinois be and is hereby granted the following certificates of service authority pursuant to Sections 13-403, 13-404, and 13-405 of the Illinois Public Utilities Act:

CERTIFICATE OF INTEREXCHANGE SERVICE AUTHORITY

IT IS HEREBY CERTIFIED that Cook County, Illinois an Illinois home rule county is authorized pursuant to Section 13-403 of the Illinois Public Utilities Act to provide facilities based

interexchange telecommunications services within the State of Illinois.

CERTIFICATE OF EXCHANGE SERVICE AUTHORITY

IT IS HEREBY CERTIFIED that Cook County, Illinois an Illinois home rule county is authorized pursuant to Section 13-404 of the Illinois Public Utilities Act to provide resold interexchange telecommunications services within the State of Illinois.

CERTIFICATE OF INTEREXCHANGE SERVICE AUTHORITY

IT IS HEREBY CERTIFIED that Cook County, Illinois an Illinois home rule county is authorized pursuant to Section 13-405 of the Illinois Public Utilities Act to provide facilities based local exchange telecommunications services within the State of Illinois.

IT IS FURTHER ORDERED that Cook County, Illinois, is required to file, with this Commission, a tariff consisting of its rates, rules and regulations, to be effective upon proper filing, before commencing any service.

IT IS FURTHER ORDERED that Cook County, Illinois is granted its requested waiver from compliance with 83 Ill. Adm. Code 710 as set out in Finding (5) above.

IT IS FURTHER ORDERED that Cook County, Illinois is granted its requested waiver from compliance with 83 Ill. Adm. Code 735.180 consistent with Finding (6) above.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By Order of the Commission this \_\_\_\_\_ day of \_\_\_\_\_ 2008.

Respectfully submitted,

STAFF OF THE ILLINOIS,  
COMMERCE COMMISSION

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December 31, 2008